

## FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by April 1, 2014. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.  
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### PROPOSED

The Committee proposes amending MCJI 140.04 to reflect an amendment to MCL 440.1201(39) and redesignation of that section to MCL 440.1201(2)(kk).

#### **[AMENDED] M Civ JI 140.04**

#### **Contract Action—UCC: Enforceability of Contract: Statute of Frauds**

A contract is enforceable if there is some writing or writings \*(signed by the [ seller / buyer / seller's agent / buyer's agent ]) sufficient to show that the seller and buyer intended to enter into a contract. The writing or writings do not have to contain all of the terms of the contract, but must specify the quantity of goods to be [ sold / purchased ].

†("Signed" includes any symbol executed or adopted by a party with present intention to ~~authenticate a writing including a carbon copy of [his / her / its] signature~~ adopt or accept a writing.)

#### Note on Use

\*If both the buyer and the seller are merchants, this instruction must be modified to reflect the special provisions of MCL 440.2201(2). If the status of either party as a merchant is an issue, see M Civ JI 140.05 b for the definition of merchant.

†This paragraph should be used only if applicable.

This instruction applies to contracts for the sale of goods for the price of \$500 or more. MCL 440.2201(1), but note that section 2201(1) was amended by 2002 PA 15 to raise the amount from \$500 to \$1,000. It does not apply to cases under MCL 440.2201(3)(a) for goods which are to be specially manufactured (see *S C Gray Inc v Ford Motor Co*, 92 Mich App 789; 286 NW2d 34 (1979)) or to cases of part performance under MCL 440.2201(3)(c) (see *West Central Packing Inc v A F Murch Co*, 109 Mich App 493; 311 NW2d 404 (1981)).

## Comment

MCL 440.2201(1), (2), ~~.1201(39)(2)~~1201(2)(kk). MCL 440.1201(39), defining “signed”, was amended effective July 1, 2013 and was redesignated MCL 440.1201(2)(kk).

On the applicability of the statute of frauds to modifications or extensions of existing contracts, see *S C Gray Inc; West Central Packing Inc*.

Between merchants, what constitutes a reasonable time for sending a confirmatory writing is a jury question. *Barron v Edwards*, 45 Mich App 210; 206 NW2d 508 (1973). A confirmation between merchants requires a quantity term. *Ace Concrete Products Co v Charles J Rogers Construction Co*, 69 Mich App 610; 245 NW2d 353 (1976); *In re Estate of Frost*, 130 Mich App 556; 344 NW2d 331 (1983) (“all” is sufficient quantity term).

## History

M Civ JI 140.04 was added January 1987.

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The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee’s function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee’s responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

**Chair:** Alfred M. Butzbaugh

**Reporter:** Timothy J. Raubinger

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